

**American Forest & Paper Association (AFPA):  
Background for OGC Dialogue Meeting**

**Overview:** AFPA would like to discuss the following topic at the May 16 OGC Dialogue Meeting: “Clean Water Act Human Health Water Quality Criteria and Tribal Fishing Rights.” This paper provides background AFPA’s past interactions with EPA on this topic.

- **Petition for Reconsideration of EPA’s partial disapproval and promulgation of Water Quality Standards for Washington** (Submitted to EPA February 21, 2017):
  - Washington submitted revised WQS to EPA on August 1, 2016. On November 15, 2016, EPA partially approved and partially disapproved Washington’s submittal. At the same time, EPA issued a final federal rule that revised a majority of human health criteria (HHC) for Washington. EPA’s final rule revised criteria that EPA promulgated for Washington in 1992 as part of the National Toxics Rule. EPA’s final HHC for Washington took effect on December 28, 2016.
  - On February 21, 2017, several groups, including AFPA, filed a petition (attached) requesting that EPA reconsider its action on Washington’s WQS and repeal or withdraw the federal rule. AFPA raised the requests outlined in its petition at an in-person meeting at EPA on August 24, 2017. In brief, these requests are as follows:
    - **Approve WA’s WQS as submitted:** EPA was required to approve Washington’s WQS, which were consistent with EPA guidance and based on scientifically defensible methods. AFPA asserts that Washington used appropriate inputs to derive its HHC, and those HHC were all approvable. AFPA focuses in particular on criteria for two pollutants- Polychlorinated Biphenyls (PCBs) and arsenic- and includes an extensive explanation for why it believes EPA should have approved the criteria submitted by Washington.
    - **Withdraw EPA’s federally promulgated WQS:** The federal rule that EPA promulgated based on its partial disapproval of Washington’s WQS should be repealed. AFPA takes issue with EPA’s rationale in the preamble to the rule, namely that EPA erred in considering and integrating into its CWA action tribal treaty fishing rights in Washington state.
  - EPA’s actions have not been challenged in court.
- **Federal Water Quality Coalition Brief in Maine WQS Litigation** (March 2, 2018):
  - The Federal Water Quality Coalition (FWCQ), a group of industrial companies, municipalities, agricultural entities and trade associations, of which AFPA is a member, filed an amicus brief (attached) in support of the State of Maine in the litigation over EPA’s disapprovals of Maine WQS in Indian country. In the brief, FWCQ argues that EPA erred in determining that it was proper to harmonize the CWA with applicable tribal fishing rights in tribal waters in Maine, and that such determination was contrary to the CWA.
- **AFPA Visit to EPA re: Washington WQS** (March 14, 2018):
  - AFPA provided two new briefing papers to EPA (attached) describing AFPA’s concerns with EPA’s disapproval of Washington’s WQS and promulgation of federal standards. One of the

papers, entitled *Stevens Treaties and Water Quality*, analyzes the relevant treaty rights, and argues that EPA misconstrued the treaties in finding that they required protection for a certain level of fish consumption. The other, entitled *EPA's November 28, 2016 Clean Water Rule*, details opposition to and issues with EPA's November 2016 promulgation of WQS for Washington.

- **AFPA Amicus Brief in *Washington v. U.S.* “Culverts” Supreme Court Case** (Filed February 2018):
  - AFPA and National Mining Association (NMA) filed an amicus brief (attached) before the Supreme Court in the *Washington v. U.S.* treaty rights litigation addressing whether road culverts built by Washington violated tribal treaty-reserved fishing rights by obstructing fish passage. In their amicus, AFPA/NMA asserted that the Ninth Circuit's opinion “imposes a wide-ranging and free-floating ‘environmental servitude’ on all actions of States and regulated communities.” (Br. at 3). As an example of the consequences of such a servitude, AFPA/NMA pointed to EPA WQS disapprovals in Maine and Washington.

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